

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Application of	)	
	)	
ATLANTIC MICROSYSTEMS, INC.	)	File No. BMDP-960510FH
	)	
For Authority to Construct and Operate a	)	
Multipoint Distribution Service Station on the H3	)	
Channel at Charlotte, North Carolina	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 10, 2002**

**Released: October 16, 2002**

By the Commission:

1. *Introduction.* On May 10, 1996, Atlantic Microsystems, Inc. (Atlantic) a wholly owned subsidiary of CAI Wireless Systems, Inc. (CAI), filed the above-captioned application for a new Multipoint Distribution Service (MDS) station. On June 17, 1996, Stanly Community College and Wireless One of North Carolina, L.L.C. (collectively "Stanly"),<sup>1</sup> Wireless Properties of Virginia, Inc. ("WPV")<sup>2</sup> and Communications Ventures, Inc. ("CVI")<sup>3</sup> filed separate petitions to deny Atlantic's application. For the reasons stated below, we deny all of the petitions to deny.

2. *Background.* On October 20, 1995, Stanly filed an application for a new Instructional Television Fixed Service (ITFS) Station on the G group channels at Charlotte, North Carolina.<sup>4</sup> On November 13, 1995, the Commission commenced an auction of MDS frequencies.<sup>5</sup> On March 29, 1996, CAI was announced as the winning bidder in the Charlotte-Gastonia, North Carolina Basic Trading Area (BTA).<sup>6</sup> CAI was required to file an application for authorization to operate an MDS station in the Charlotte-Gastonia BTA, or a statement of intention to file such an application, by May 10, 1996. On May 10, 1996, Atlantic filed the above-captioned long-form application for a new MDS station at Charlotte, North Carolina.<sup>7</sup> On May 17, 1996, the Video Services Division, Mass Media Bureau released a public notice accepting Atlantic's application for filing.<sup>8</sup>

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<sup>1</sup> Petition to Deny filed by Stanly Community College and Wireless One of North Carolina, L.L.C. (Wireless One) (filed June 17, 1996) (Stanly Petition). Wireless One identified itself as the lessee of Stanly's excess airtime. Stanly Petition at 1.

<sup>2</sup> Petition to Deny filed by Wireless Properties of Virginia, Inc. (filed June 17, 1996) (WPV Petition).

<sup>3</sup> Petition to Deny filed by Communications Ventures, Inc. (filed June 17, 1996) (CVI Petition).

<sup>4</sup> File No. BPLIF-951020FQ.

<sup>5</sup> FCC Announces the Status of Applications to Participate in Auction of the Multipoint Distribution Service, *Public Notice*, Report No. AUC-95-06 (WTB rel. Oct. 16, 1995).

<sup>6</sup> Winning Bidders in the Auction of Authorizations to Provide Multipoint Distribution Service in 493 Basic Trading Areas, *Public Notice*, (WTB rel. Mar. 29, 1996).

<sup>7</sup> File No. BMDP-960510FH.

<sup>8</sup> See MMB MDS Public Notice Report No. D-853.

3. On June 17, 1996, Stanly, WPV and CVI each filed petitions to deny Atlantic's application. Stanly contends that Atlantic's application must be returned because it did not provide the requisite interference protection to facilities proposed in Stanly's previously filed ITFS application, in violation of Section 21.902(d) of the Commission's rules.<sup>9</sup> WPV contends that Atlantic's application does not comply with Section 21.902 of the Commission's rules because it would cause harmful interference to WPV's Station WNTI942, Wytheville, Virginia.<sup>10</sup> CVI contends that Atlantic's proposed station would not provide the required interference protection to the Greensboro, North Carolina BTA, for which CVI is the BTA authorization holder.<sup>11</sup>

4. Subsequently, on October 2, 1996, WPV's license for Station WNTI942 was forfeited.<sup>12</sup> On June 29, 2000, Stanly amended its application to specify Channels G1 and G2, instead of all the G group channels.<sup>13</sup> Stanly reported that it was amending its ITFS application pursuant to a settlement with Central Piedmont Community College.<sup>14</sup> Stanly's amended application was granted on October 23, 2001.<sup>15</sup>

5. *Discussion.* Based on the record currently before us, we will deny the Stanly Petition and the WPV Petition. We note, as an initial matter, that intervening events have eliminated the grounds for their objections. Under the Commission's rules, an MDS station may be granted if it would, *inter alia*, not cause harmful electrical interference to any authorized station.<sup>16</sup> With respect to Stanly, Atlantic's application will not cause any interference to Stanly's licensed facilities because Stanly is licensed on Channels G1 and G2. Because the Commission's rules only require co-channel and adjacent channel protection,<sup>17</sup> and because Channels G1 and G2 are not adjacent to Channel H3,<sup>18</sup> Atlantic's proposal currently complies with the Commission's interference rules. With respect to WPV, the basis for its petition was alleged interference to its Station WNTI942. According to our licensing records, Station WNTI942 is no longer an authorized station. Thus, we conclude that whether Atlantic's proposed station would have caused interference to that station is no longer relevant. Accordingly, we will deny both the Stanly Petition and the WPV Petition.

6. With respect to the CVI Petition, CVI alleges that because there is line of sight between Atlantic's transmitter site and the Greensboro, North Carolina BTA, there would be harmful interference "regardless of the operating parameters."<sup>19</sup> Section 21.938(f) of the Commission's rules provides that the calculated free space power flux density from a non-incumbent MDS station may not exceed -73dBW/m<sup>2</sup> at the border of an adjacent BTA.<sup>20</sup> Atlantic alleges, and CVI does not dispute, that Atlantic complies

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<sup>9</sup> See Stanly Petition at 3.

<sup>10</sup> See WPV Petition.

<sup>11</sup> See CVI Petition.

<sup>12</sup> See Broadband Licensing System record for Station WNTI942.

<sup>13</sup> Amendment to BPLIF-951020FQ (filed June 29, 2000).

<sup>14</sup> *Id.*

<sup>15</sup> See MMB MDS Public Notice Report No. 559 (released October 26, 2001).

<sup>16</sup> 47 C.F.R. § 21.32(a)(3).

<sup>17</sup> 47 C.F.R. § 21.902(b)(3), (4).

<sup>18</sup> Channels G1 and G2 are located at 2644-2650 and 2656-2662 MHz. See 47 C.F.R. § 74.902. Channel H3 is located at 2674-2680 MHz. See 47 C.F.R. § 21.901(b)(6).

<sup>19</sup> CVI Petition.

<sup>20</sup> 47 C.F.R. § 21.938(f).

with that requirement.<sup>21</sup> Instead, CVI argues that compliance with the power flux density requirement in Section 21.938(f) does not ensure compliance with the requirement in Section 21.938(b)(1) of the Commission's rules<sup>22</sup> that BTA authorization holders must not cause interference to adjoining BTAs.<sup>23</sup> While we agree with the latter statement, we do not believe that it constitutes a basis for dismissing Atlantic's application. We believe that Atlantic's compliance with Section 21.938(f) makes its application grantable. In establishing its MDS interference rules, the Commission said:

Interference among adjacent BTA operators will be partially controlled by establishing an allowable limit for a station's predicted signal strength at all points along a BTA boundary. The same limiting signal strength will apply at the boundaries of every BTA, regardless of its size or shape. An exception to this limit would be justified where a single entity obtains authorization for adjacent BTAs. While we recognize that several commenting parties are concerned that an MDS signal simply does not stop at the area boundary, we believe the level of limiting signal strength given below, together with the multitude of available interference abatement techniques, will facilitate control of interference between BTA authorization holders in adjoining BTAs.<sup>24</sup>

We therefore deny the CVI Petition. We nonetheless reiterate that Atlantic has a continuing duty to avoid causing interference to CVI's duly licensed operations in the Greensboro, North Carolina BTA.<sup>25</sup>

9. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 21.30 of the Commission's rules, 47 C.F.R. § 21.30, the Petitions to Deny filed by Stanly Community College and Wireless One of North Carolina, L.L.C., Wireless Properties of Virginia, Inc., and Communications Ventures, Inc., on June 17, 1996 ARE DENIED.

10. IT IS FURTHER ORDERED, pursuant to Section 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 21.30 of the Commission's rules, 47 C.F.R. § 21.30, that the Licensing and Technical Analysis Branch SHALL PROCESS Atlantic's application FCC File No. BMDP-960510FH, in accordance with this *Memorandum Opinion and Order* and the Commission's Rules applicable thereto.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

#### FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

<sup>21</sup> Compare Opposition to Petition to Deny filed by CAI Wireless Systems, Inc. and Atlantic Microsystems, Inc. (filed June 27, 1996) at 2 and Reply to Opposition filed by Communications Ventures, Inc. (filed July 31, 1996) (CVI Reply), Technical Statement and Declaration at 1.

<sup>22</sup> 47 C.F.R. § 21.938(b)(1).

<sup>23</sup> CVI Reply, Technical Statement and Declaration at 1.

<sup>24</sup> Amendments of Parts 21 and 74 of the Commission's rules with Regard to Filing Procedures in the Multipoint Distribution Service and the Instructional Television Fixed Service, MM Docket No. 94-131, *Report and Order*, 10 FCC Rcd 9589, 9615 ¶ 50 (1996).

<sup>25</sup> 47 C.F.R. § 21.938(b)(1).